
2003 Wis Eth Bd 09A
LOCAL CODE -- DISQUALIFICATION

¶1 This is in response to your letter requesting a supplementary opinion to our previous opinion 2003 Wis Eth Bd 09.

¶2 You have indicated that the special purpose district has followed the Ethics Board's advice and reconsidered its previous decision to distribute surplus monies only to original members of the district. The district is now considering a plan to distribute the surplus to all district members who paid the original fee, irrespective of when the individual joined. You have said that this will comprise a majority of members of the district.

¶3 You further indicate that two of the three district commissioners would receive a distribution of money under the new proposed plan. Your question is whether these commissioners are disqualified from voting on the plan.

¶4 We agree with you that the question of what to do with the district's surplus is a matter of broad policy; that is, it is a quasi-legislative matter distinguishable from a quasi-judicial matter such as the award of a grant or contract, or a petition affecting one individual.

¶5 As we noted in our prior opinion, even if a local official has a substantial financial interest in a quasi-legislative matter, the official may still participate in the matter's consideration, as long as:

- A. The official's action affects a whole class of similarly-situated interests;
- B. The official's interest is insignificant when compared to all affected interests in the class; and
- C. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class.

¶6 Under the new proposal, the commissioners who would receive a distribution of surplus monies are a small part of the class of individuals eligible for a distribution. The eligible class comprises a majority of district members each of whom paid the original fee. All members of that class will be treated equally. In these circumstances, we believe that public policy favors the commissioners' full participation in the decision concerning the surplus monies. Section 19.59 is not an impediment to the commissioners acting in the matter about which you have asked because they have no personal financial interest in the matter that is distinct from the general public interest.